

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JONATHAN B. ALLEN

Appeal No. 97-3665
Application 08/280,039¹

ON BRIEF

Before HAIRSTON, JERRY SMITH & LEE, Administrative Patent Judges.

LEE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-41. No claim has been allowed.

References relied on by the Examiner

Stringer et. al. (Stringer)	5,341,429	Aug. 23, 1994
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The Rejections on Appeal

¹ Application for patent filed July 25, 1994.

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Claims 1-41 stand rejected under 35 U.S.C. § 102(e) as
being unpatentable over Stringer.

The Invention

The invention is directed to a method and system for sending data over a communication network to authorized individuals. Claims 1, 17, 26, 31 and 37 are independent claims. Representative claim 1 is reproduced below:

1. A method of delivering data over a communication network, comprising the steps of:

generating a partially-degraded version of the data by altering a portion of the data to reduce its perceived quality when utilized;

providing the partially-degraded version of the data over the network to a customer at a user terminal connected to the network; and

providing a higher quality version of the data to the customer over the network if the customer is entitled to receive the higher quality version.

Opinion

We affirm-in-part.

Our affirmance of the rejection of some claims is based only on the arguments presented by appellant in his appeal brief. Arguments which could have been raised but not actually raised and presented in the briefs are not before us, are not at issue, and are considered as waived. We do not undertake to re-examine the application ab initio.

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Anticipation is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of the claimed invention. In re Spada, 911 F.2d 705, 707, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990); RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed.Cir. 1984). See also In re King, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986); Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984). The prior art reference must either expressly or inherently describe each and every limitation in a claim. Verdegaal Bros. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987).

All of the appellant's claims on appeal require the delivery of data to a user terminal on a communications network. According to the appellant (Br. at page 11), Stringer discloses neither a method nor system for delivering data over a "communications network" and thus cannot anticipate the appellant's claimed invention. The argument is without merit.

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Claim terms are properly given their broadest reasonable interpretation during patent examination. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1990); In re Pearson, 494 F.2d 1399, 1404, 181 USPQ 641, 645 (CCPA 1974); In re Prater, 415 F.2d 1393, 1404, 162 USPQ 541, 550 (CCPA 1969). The term "communications network" is not limited to any particular type of communication, either wireless, by cable, or even bidirectional. Extraneous features cannot be read from the specification into the claims. E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co., 849 F.2d 1430, 1433, 7 USPQ2d 1129, 1131 (Fed. Cir. 1988). Here, it is not necessary to read in limitations from the specification to make sense of the term "communications network."

Since there is no requirement for bidirectional communication, transmission by public broadcasting for reception by a plurality of radio receivers constitutes a form of communications network. In column 4, lines 49-51, Stringer describes an embodiment in which denatured versions of data are transmitted by radio broadcasting. Thus, the network is comprised of a single transmitter, the broadcasting station, and a plurality of receivers tuned in to the transmission

frequency. The receivers constitute the user terminals. It does not matter that the receivers do not provide any indication of receipt back to the source of transmission. Bidirectional communication is not required by the claims. In any event, Stringer contemplates that an interested user make a telephone call to the source of transmission to make a purchase of the transmitted data (column 4, lines 36-40). The telephone lines are reasonably deemed a part of the communications network used, and none of the appellant's claims requires that any particular data travel all legs of the communications network.

The appellant further argues (Br. at 9) that in a particular embodiment disclosed in Stringer, the perceived quality of data is exactly the same for both the evaluation version and for the actual version upon purchase, whereas the claimed invention requires the two versions to be different in quality. The argument is without merit since it discusses only a particular embodiment of Stringer and ignores other embodiments which include versions of different quality, one for evaluation, and one for purchase. See examples 2, 3, and 4 described in Stringer's columns 12-13.

For the foregoing reasons, we will sustain the rejection of claims 1-5, 7-10, 14, 17-19, 21, and 23-38.

For claims 6, 11, 12, 13, 15, 16, 20, 22, 39, 40 and 41, the appellant makes separate arguments urging their patentability. We agree with the appellant with respect to claims 6, 12, 13, 15, 16, 22, 40, and 41. The examiner has not addressed the issues raised by the appellant.

With respect to claims 11, 20, and 39, however, the appellant's arguments are without merit. As for claim 11, in column 9, lines 18-24 of Stringer, it is described that the denaturing process uses an encryption algorithm and that to enable the product a special enable program is activated by a code number. The code constitutes a decryption key. Evidently, the code is transmitted to the user upon making a purchase. See column 4, lines 36-40. As for claim 20, note that in Stringer an access code is transmitted to the user only when a credit card number is provided by a telephone call to make a purchase. See column 4, lines 33-40. That satisfies the requirement of determining if royalty payment has been received. As for claim 39, we have already discussed above how the wireless broadcasting of Stringer constitutes a

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communications network. Accordingly, Stringer does disclose the transmission of a partially degraded version over a communications network.

Accordingly, the rejection of claims 6, 12, 13, 15, 16, 22, 40 and 41 cannot be sustained. We will, however, sustain the rejection of claims 11, 20 and 39.

Conclusion

The rejection of claims 1-5, 7-11, 14, 17-21, and 23-39 under 35 U.S.C. § 102(e) as being anticipated by Stringer is affirmed.

The rejection of claims 6, 12, 13, 15, 16, 22, 40 and 41 under 35 U.S.C. § 102(e) as being anticipated by Stringer is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

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KENNETH W. HAIRSTON
Administrative Patent Judge

JERRY SMITH
Administrative Patent Judge

JAMESON LEE
Administrative Patent Judge

BOARD OF PATENT
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